

December 10, 2003

BY HAND

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: Cambridge Electric Light Company, Commonwealth Electric Company, Boston Edison Company, NSTAR Gas Company, d/b/a NSTAR, D.T.E 03 – 47-A

Dear Secretary Cottrell:

On October 31, 2003, the Department of Telecommunications and Energy (“Department”) issued its Order on the petition of Cambridge Electric Light Company, Commonwealth Electric Company, Boston Edison Company, NSTAR Gas Company, (“NSTAR” or “Company”) to establish a new reconciling tariff. On December 1, 2003, NSTAR filed with the Department a new Pension/PBOP Adjustment Mechanism (“PAM”), based on the tariffs rejected by the Department, and a schedule of the Company’s first annual/PBOP Adjustment Factors (“PAF”).

The Attorney General asks the Department to allow discovery, hearings and briefs on the calculation of the PAFs. The PAF schedules contain new, subjective and undocumented information that exceed reasonable expectations of what should be included in a compliance filing, and render the PAM tariff too subjective for approval.¹ The Company did not present these schedules at any time during the hearings in this case. The Company’s pension and PBOP figures are not objective and the Department should not approve them without an examination by all parties.

¹ The original and new tariffs submitted by the Company, require that the Company file “complete documentation” supporting its calculations, which reasonably would include all work papers, assumptions, calculations and functioning copies of all spread sheet models used, if any. M.D.T.E. Nos. 109, 209, 309, 409, § 1.06 (proposed original and revised). Consistent with the burden of proof imposed on the proponent of a requested regulatory treatment for an expense, compliance with the Department’s Order should require a reviewable and well-documented PAF schedule, which the Company has not filed.

There is no statutory authorization for the Department's pension mechanism, and no pre-existing regulation for its implementation. The Department has not ruled on when parties will have an opportunity to examine the final tariffs and the data the Company has calculated, purportedly in compliance with the Department's orders and directives. The Department set the period for the Company's compliance filing outside the normal twenty day period for clarification, reconsideration and recalculations motions directed at final orders. *Compare* Order, p. 45 *with* 220 C.M.R. §§ 1.11 (9)&(10). As a result, the parties are not limited to examining the compliance filing during the usual time period for motions challenging the Company's compliance with the original order. *Compare Boston Gas Company*, 96-50-A, p. 4 (Phase I) (1996) (reconsideration motion granted "[b]ecause the Company [first] provided this information as part of its Compliance Filing [within twenty days of the order and], this information could not have been available at the time the Department issued its Order."). These circumstances merit a continuation of the current proceeding to review the compliance filing with comments, the presentation of evidence, discovery, hearings, cross examination and briefing. *See generally Boston Gas Company*, D.P.U. 97-32 (1997) (hearing for examination of first annual PBR compliance filing). In the alternative, since the Company submitted materially different revised tariffs than the ones rejected by the Department in the original filing, the Department could issue a suspension order pending an investigation. G. L. c. 164, § 94.

NSTAR's PAM and PAF provide no support for any of the numbers used to determine the \$13.5 million that it claims as appropriate for recovery. Although the Company has attached to the filing two summary pages of PAF numbers that add up to the \$13.5 million amount, they do not provide any of the supporting documentation for these numbers. The lack of information and the subjective nature of the underlying actuarial estimates necessitate an evidentiary hearing so the Department can examine the facts necessary to support the \$13.5 million request. For purposes of illustration, rather than limitation, the Attorney General would investigate at least five general topics:

(1) Pension And PBOPs Prepaid

Attachment Page 1 of the filing entitled "2004 Pension Adjustment Factor Calculation," Lines 9, 10, 12, 14, 15, and 17, provide amounts used to determine the Prepaid Balances on which the Company seeks to earn carrying charges. The Company's takes the Prepaid Balances from its Pension and PBOPs actuarial studies. First, there has been no disaggregation of these balances to remove the prepaid amounts associated with (a) the generation business including the \$86 million in prepaids that the Company received through the transition charge, (b) the transmission business which specifically recovers the carrying charge on the prepaid balance through the transmission rates, (c) the holding company, and (d) other NSTAR businesses. Second, the Department should investigate the Company's assumptions underlying the amount of prepaid. Third, the Company applies factors of 0.82 and 0.83 for Pensions and PBOPs respectively without explanation, reducing the amount of deferred income taxes deducted from the Prepaid Balances.

(2) Pension And PBOPs Cost / Expense Amounts

Attachment Page 2 of the filing entitled “2004 Pension Adjustment Mechanism,” Lines 2 through 8, provide numbers indicating the claimed amounts of Pension and PBOP Costs and the capitalized amounts used to reconcile the booked amount and the amounts in rates. The Company Pension and PBOP expenses must be tested for appropriateness regarding:

1. the subjective actuarial assumptions that the Company’s management has used to determine the Pension and PBOPs costs;
2. the amount of cost that has been assigned / allocated to each of the following:
 - (a) the generation business,
 - (b) the transmission business,
 - (c) NSTAR’s holding company, and
 - (d) other NSTAR businesses;
3. the allocation of the remaining costs among the distribution companies as indicated in Columns C through D;
4. the determination of the amount charged to capital; and
5. assignment / allocation of these costs from the service company.

(3) Pension And PBOPs Expense Amounts “Included” In Rates

Attachment Page 1 of the filing entitled “2004 Pension Adjustment Factor Calculation,” Line 3, has the Pension and PBOP Expense amounts that the Company claims are “currently in rates” which NSTAR uses as the basis for the reconciliation to the amount that the Company books for financial reporting purposes. The Department should investigate and determine the amount that is “included” in rates. The Company also has not added to its “amounts included in rates” the cash working capital allowance associated with the pension and PBOPs costs. Allowing carrying charges on the Prepaid Balances provides for a double-recovery of the cash working capital allowance.

(4) Deferral Balances

Attachment Page 1 of the filing entitled “2004 Pension Adjustment Factor Calculation,”

Line 1, lists deferral balances that the Company attempts to recover, including: (a) the amount of the regulatory asset pension cost deferral for the Boston Edison Company from D.P.U. 92-92 and (2) the amount of the PBOP deferral for the Cambridge Electric Light Company from D.P.U. 92-250.² The Company provided no accounting for these figures. The Department has not reviewed the 13 years of cost deferrals or the associated carrying charges to determine whether the Company complied with the settlement in D.P.U. 92-92 and the order in D.P.U. 92-250 and performed the correct calculations.

(5) Carrying Charges

On attachment Page 1 of the filing entitled “2004 Pension Adjustment Factor Calculation,” Line 8, the Company has used a 10.88 percent carrying charge to apply to the Prepaid Balances, claiming this is the before-tax amount that should be used to determine the carrying charges on the Prepaid Balances. The Department allowed a return on the Prepaid Balances at the rate of 8.16 percent, and did not recognize or make any provision for grossing that amount up for income taxes. The carrying charge should be based on 8.16 percent the allowed by the Department. Order, p. 44..

The Company has submitted subjective, undocumented and, in some cases, inappropriate calculations. The Attorney General asks the Department to institute a suitable procedure to address the issues discussed in this letter prior to ruling on the PAM and PAF submissions, or reject the tariffs for failing to comply with Department orders.

Sincerely,

Alexander J. Cochis
Assistant Attorney General

cc: Service list

² The Department allowed Boston Edison to defer the difference between the amount included in rates in that cost of service and the expense amount. *Boston Edison Company*, D.P.U. 92-92 (1992) (Settlement Agreement, p. 10). The Department also allowed Cambridge Electric Light Company to defer the PBOP difference, but was allowed carrying charges on the deferral. *Cambridge Electric Light Company*, D.P.U. 92-250, p.p. 52-54 (1993).